

Remarks:

Applicant's attorney affirms the election to prosecute the invention of Group I, claims 1-4, 6-15 and 19-21.

Claims 22 and 24-26 have been withdrawn.

Claims 1-4, 6-12, and 14 have been rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. Applicant traverses this rejection.

The Examiner has indicated that he was unable to find support for the limitation in claim 1 that states "the proximal body portion being responsive to insertion into the body tissue to move from the open to the closed position". The Examiner's attention is directed to the specification, page 11, lines 5-9 and to page 14, lines 2-13 which support for this limitation. In particular, it is stated at page 14, line 2-5 that "as the suture anchor 10 enters the hole 200 the proximal body portion 22 is compressed from a generally conical/oval configuration....into a cylindrical configuration....by the cylindrical wall of the hole 200". (emphasis added) The specification further goes on to state that as an alternative to compressing the proximal body portion as the suture anchor enters the hole "the proximal body portion 22 may be compressed manually outside the hole 200 prior to insertion of the suture anchor 10". (page 14, lines 9-10)

The Examiner further rejected claims 1-4, 6-12 and 14 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses this rejection.

The Examiner noted that the word "responsive" is not clear. However, as stated above, the proximal body portion is compressed "as the suture anchor 10 enters the hole 200". The use of the word "as" (page 14, line 2) in conjunction with the word "by" (page 14, line 10) clearly

indicates that the compression of the proximal body portion is caused by the cylindrical wall of the hole and is consequently “responsive” to insertion into the body tissue. The Examiner states that the term “responsive” suggests that upon insertion of the anchor into the body the proximal portion reacts by closing. Applicant respectfully submits that the Examiner’s initial statement that this suggestion was not in the original disclosure should now clearly be overcome by virtue of the aforementioned citation of relevant portions of the specification.

The Examiner rejected claims 1-4, 6-12, 14, 15, and 19-21 under 35 USC 102(b) as being anticipated by Schwartz et al. Applicant traverses the rejection.

The Schwartz device is totally unlike the claimed invention. Initially it should be noted that what the Examiner identifies as aperture 30 does not in fact receive suture transversely to the longitudinal axis. Element 30 is a split gap or slit or split groove as clearly defined by Schwartz at column 4, line 54, column 5, line 18 and column 5, line 49 and has an outer circular profile to fit in locking ring 70. Split gap 30 is aligned with the cannulation 22 of the various Schwartz embodiments and is designed to receive suture which extends axially, in alignment with cannulation 22. Consequently, the suture gripped by the Schwartz device is not directed transversely. Moreover, the locking ring 70 of the Schwartz device is not only a separate piece from the main body of the device but it must be longitudinally moved relative to the main body of the device in order to effect any crimping action. Applicant’s invention, on the other hand, is not only a single piece structure but the individual movable elements are moved transversely to the axis of the device in order to be placed into a locked position. Furthermore, the Schwartz device requires suture to exit from the device at the distal tip of cannulation 22 while the claimed invention does not have this limitation. Applicant respectfully submits the claimed invention is

patentably distinct from Schwartz et al. and requests the Examiner's reconsideration of this rejection.

The Examiner also rejected claims 14 and 20 under 35 USC 103(a) as being unpatentable over Schwartz '961. Applicant respectfully traverses this rejection.

For reasons explained above Applicant respectfully submits the Section 103(a) rejection is unfounded. There is no suggestion in Schwartz that a suture passageway could extend transversely to the longitudinal axis (i.e. cannulation 22) of the Schwartz device.

The Examiner has noted that he considers the Schwartz device to contain three options for the cross-sectional shape of the proximal body portion. Applicant respectfully submits that this is not the relevant standard of comparison. There is no disclosure or suggestion in Schwartz that the locking mechanism is effective upon insertion into the body. In the embodiments shown in Schwartz Figures 1-4 the locking effect is achieved by moving a mechanism such as a bead 46 or knot 48 so as to create a wedging effect within an axial cannulation within the body of the device. In the embodiments shown in Figures 5-8 the locking effect is achieved by relative longitudinal motion between two axially aligned circular components. Schwartz specifically describes that the locking ring 70 may be pulled (column 4, line 56) or pushed (column 5, line 13). There is no disclosure or suggestion that the locking effect is achieved simultaneously with and by the insertion of the Schwartz device into body tissue. Furthermore, Applicant's invention is suitable for use in a hole drilled in bone. The hole diameter is a constraint on any suture anchor inserted into the hole and, therefore, the transverse dimensions of portions of the claimed invention are relevant. (Hence, dependent claims 3 and 4 relate to the transverse dimensions of the claimed invention.) The outer diameters of the Schwartz embodiments are always the same

such that no insertion into a body will cause the diameter to change. Some other unidentified instrument (column 4, line 67) is required to effect compression on the suture. Applicant respectfully submits these claims cannot be anticipated by Schwartz and requests the Examiner's reconsideration of the rejection of claims 14 and 20.

Applicant believes that the claims remaining in this case are in condition for allowance and respectfully requests that a timely Notice of Allowance be issued in this case. Examiner is encouraged to contact Applicant by telephone with any questions about the content of this amendment or to discuss allowable subject matter to facilitate placing this case in condition for allowance.